

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employer and Apprenticeship Services
(New Administrative Regulation)

787 KAR 3:020. Confidentiality of records of the Office of Employer and Apprenticeship Services.

RELATES TO: KRS 151B.280

STATUTORY AUTHORITY: KRS 151B.280(5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.280(5)(a) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations to protect the confidential nature of all records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet's Office of Employer and Apprenticeship Services. This administrative regulation establishes which records of the Office of Employer and Apprenticeship Services shall be considered confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. The employment and service records identified in this section shall be confidential and shall not be subject to disclosure, except as provided in KRS 151B.280(5)(a) and (b):

(1) Work Opportunity Tax Credit Program:

(a) Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit;

(b) ETA Form 9061, Individual Characteristics Form Work Opportunity Tax Credit;

(c) ETA Form 9063, Employer Certification Work Opportunity Tax Credit;

(d) ETA Form 9175, Long Term Unemployment Recipient Self-Attestation Form, Work Opportunity Tax Credit Program;

(e) Form 2828, Power of Attorney and Declaration of Representative; and

(f) Documents provided by employers in support of their applications for the Work Opportunity Tax Credit that contain "personal information" as that term is defined in KRS 61.931(6) to include Form W-4 and DD Form 214.

(2) Registered Apprenticeship:

(a) Kentucky Registered Apprenticeship Registration, Standards, and Agreement (ETA Form 671, Section 1);

(b) Program Registration and Apprenticeship Agreement, Office of Apprenticeship, Apprentice Registration (ETA Form 671, Section 2);

(c) ETA Form 671, Voluntary Disability Disclosure;

(d) Registered Apprenticeship Standards Occupation Page;

(e) RAPIDS Program Registration Form;

(f) Apprentice "personal information" as that term is defined in KRS 61.931(6) contained in the Commonwealth's Citizen Connect online portal;

(g) Employer Acceptance Agreement (Registered Apprenticeship Appendix D); and

(h) Additional documents provided by employers relevant to apprenticeship program approval that contain private business information to include Approved Job Description and Related Technical Instruction outlines, Vendor Verifications, Citation Requests, and Occupation Support Letters.

(3) Federal Bonding Program:

(a) Kentucky Federal Bonding Program Requests from employers; and

(b) Kentucky Federal Bonding Program Conditional Pre-Approval Letter.

MARTY HAMMONS, Commissioner

APPROVED BY AGENCY: November 12, 2021

FILED WITH LRC: November 12, 2021 at 12:12 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2022, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Michelle DeJohn, Executive Director, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone 502-782-3252, email michelle.dejohn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michelle DeJohn

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 151B.280(5)(a) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations to protect the confidential nature of all records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet's Office of Employer and Apprenticeship Services. This administrative regulation establishes which records of the Office of Employer and Apprenticeship Services shall be considered confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

(b) The necessity of this administrative regulation: The secretary of the Education and Workforce Development Cabinet is required to promulgate this regulation to protect the confidentiality of certain records of the Office of Employer and Apprenticeship Services pursuant to KRS 151B.280(5)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides a detailed list of program related documents in the possession of the Office of Employer and Apprenticeship Services that are deemed confidential pursuant to KRS 151B.280(5)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the effective administration of agency programs by identifying the Office of Employer and Apprenticeship Services documents deemed confidential pursuant to KRS 151B.280(5)(a), thereby encouraging full disclosure of information on the part of job applicants and employers who participate in the agency's programs as well as providing guidelines to employment service personnel in responding to requests for information.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: N/A
- (b) The necessity of the amendment to this administrative regulation: N/A
- (c) How the amendment conforms to the content of the authorizing statutes: N/A
- (d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 347 businesses and nearly 4,165 apprentices participating in Office of Employer and Apprenticeship Services' Registered Apprenticeship program, and 13,783 applications for the Work Opportunity Tax Credit Program were processed in the previous quarter. Documents related to those businesses and apprentices are covered by this regulation.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No additional actions will have to be taken by businesses or apprentices. This regulation ensures the confidentiality of the documents they already submit to the Office of Employer and Apprenticeship Services in order to participate in the agency's programs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation will not cost businesses or apprentices any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities: By providing a detailed list of Office of Employer and Apprenticeship documents deemed confidential, this regulation encourages full disclosure of information on the part of job applicants and employers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost initially to implement this administrative regulation.

(b) On a continuing basis: There is no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Employer and Apprenticeship Services is funded both by general state funds and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipated increase in fees or funding necessary to implement this regulation. Any increase in costs would be negligible and able to be handled by the current administrative staff.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The regulation will be applied uniformly to Office of Employer and Apprenticeship Services documents and tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Employer and Apprenticeship Services within the Education and Workforce Development Cabinet's Department of Workforce Investment will be impacted by this regulation as it specifically identifies the agency's documents that are deemed confidential.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.280(5)(a).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the state for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for the state for subsequent years.

(c) How much will it cost to administer this program for the first year? The documents identified as confidential in this regulation are part of existing programs and the regulation will not have any increase in costs.

(d) How much will it cost to administer this program for subsequent years? Any additional costs brought on by this regulation will be negligible and can be absorbed through current staffing levels.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: There is no fiscal impact associated with this amendment.